



03-03-05

RCE  
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PTO/SB/30 (09-04)

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**Request  
for  
Continued Examination (RCE)  
Transmittal**Address to:  
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P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	10/659,548
Filing Date	09/10/2003
First Named Inventor	COLEMAN, Marian
Art Unit	3727
Examiner Name	NGO, Lien M.
Attorney Docket Number	25980-RA

**This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.**  
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

- a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_

ii. ☒ Other Consider the arguments/amendments in the Response filed on 12/20/2004.

- b. ☒ Enclosed

i. ☐ Amendment/Reply

iii. ☐ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/ Declaration(s)

iv. ☒ Other Courtesy Copy of 12/20/04 Response

2. **Miscellaneous**

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other \_\_\_\_\_

3. **Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

- a. ☐ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. \_\_\_\_\_. I have enclosed a duplicate copy of this sheet.

i. ☐ RCE fee required under 37 CFR 1.17(e)

03/04/2005 HDNESS1 00000014 10659548

ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)

01 FC:2801

395.00 (P)

iii. ☐ Other \_\_\_\_\_

- b. ☒ Check in the amount of \$ 395.00 enclosed

- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.****SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED**

Signature	<i>Sandra M. Sovinski</i>	Date	3-2-2005
Name (Print/Type)	Sandra M. Sovinski, Esq.	Registration No.	45,781

**CERTIFICATE OF MAILING OR TRANSMISSION****Express Mail**

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Signature	<i>LaRenda Meyer</i>	Date	3/2/05
Name (Print/Type)	LaRenda Meyer		

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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EV579614766US

PATENT  
10/659,548

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	COLEMAN, Marian	)	Docket No:	25980-RA
		)		
Serial No.:	10/659,548	)	Examiner:	NGO, Lien M.
		)		
Filed:	September 10, 2003	)	Group Art:	3727

For: CAP FOR BEVERAGE CAN

**REQUEST FOR CONTINUED EXAMINATION UNDER 37 CFR 1.114 AND  
FOR CONSIDERATION OF PREVIOUSLY FILED REPLY**

March 2, 2005

Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

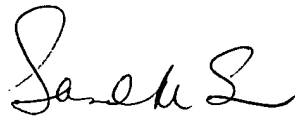
Dear Sir:

Responsive to the Advisory Action mailed January 14, 2005, in the above-styled patent application, Applicant respectfully enters a request for continued examination under 37 CFR 1.114. Please find enclosed a Request for Continued Examination Transmittal, a Courtesy Copy of Amendment/Reply as previously filed on December 20, 2004, a Petition for One-Month Extension of time, and all fees associated therewith.

Examiner is invited to telephone Applicant's undersigned attorney should he have any questions.

Respectfully submitted,

Dated: 3-2-2005



Sandra M. Sovinski  
Attorney for Applicant  
Reg. No. 45,781

Myers & Kaplan,  
Intellectual Property Law, L.L.C.  
1899 Powers Ferry Road  
Suite 310  
Atlanta, GA 30339  
770-541-7444

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3-2-05  
(Date)

Lalenda Meyer  
(Name of Person Mailing)

  
(Signature of Person Mailing)

3/2/05  
(Date)



Ev520878065US

**COPY**

**COURTESY  
COPY**

Attorney Docket No.: 25980-RA  
PATENT

REPLY UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
TECHNOLOGY CENTER 1700

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application Serial No.: 10/659,548 )  
 )  
Filed: 09/10/2003 ) Examiner: NGO, Lien M.  
 )  
Inventor: COLEMAN, Marian ) Art Unit: 3727  
 )  
For: CAP FOR BEVERAGE CAN )  
 )

**RESPONSE TO FINAL OFFICE ACTION - AMENDMENT UNDER 37 CFR 1.116**

Mail Stop: Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Myers & Kaplan,  
Intellectual Property Law LLC  
1899 Powers Ferry Road  
Suite 310  
Atlanta, GA 30339

December 20, 2004

Dear Sir:

Responsive to the Final Office Action mailed November 8, 2004, in the above-styled patent application, please amend the application as indicated and consider the appended remarks. Please find enclosed amendments to the claims, including status of all claims. Applicant believes that the present amendments distinguish the claims over the prior art and thus, in compliance with 37 CFR 1.116(b), place the rejected claims in better form for

consideration and in condition for allowance. Please also find enclosed a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address. Please amend the record accordingly.

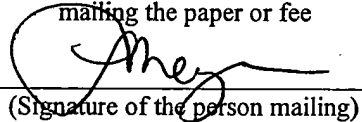
CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence, along with any papers referred to therein as being attached or enclosed therewith, is being deposited with the United States Postal Service with sufficient postage as Express Mail, No. 9520878025 US, in an envelope addressed to Mail Stop: Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on:

December 20, 2004  
(Date)

Lakend Meyer

Name of the person  
mailing the paper or fee

  
(Signature of the person mailing)

## AMENDMENTS

### In the Claims:

Please replace pending Claims 1, 2, 5 and 6 with the amended Claims 1, 2, 5 and 6, and cancel Claims 3, 4, 7 and 8 as follows:

1. (Presently Amended) An can sealing apparatus comprising:  
~~a can having a top portion having a pull tab attached to the top portion of the can;~~  
~~wherein the pull tab is able to be used to create an opening in the top portion of the can;~~  
~~wherein after the pull tab is used to create an opening in the top portion of the can, and while the opening is exposed, the pull tab is attached to the can;~~  
~~further comprising~~  
a cap base having an upper surface and an outer perimeter, said outer perimeter of said cap base dimensioned to facilitate insertion of said cap base into for covering the a flip-top can lid opening in the can comprising;  
a depression; and  
a cap top defined by a peripheral flange extending outwardly relative to said outer perimeter of said cap base, proximate a first end of said cap base, said peripheral flange defining a generally flat C-shaped member having a first end and a second end,

and by a flip-top can tab receiving port positioned proximate said first end of said cap base and proximate said outer perimeter of said cap base, said flip-top can tab receiving port defined in a non-flange region between said first end and said second end of said C-shaped member, connected to the depression and at least partially surrounding the depression; and thereby facilitating placement of flip-top can tab receiving port of said can sealing apparatus proximate an opened flip-top can tab.

~~wherein the cap is separate from the pull tab so that the cap can be removed from the can without detaching the pull tab from the can.~~

2. (Presently Amended) The can sealing apparatus of claim 1 wherein

~~the can is a soda can; and~~

wherein said cap base further comprises an interior wall, said interior wall extending from said upper surface to said peripheral flange of said cap top, thereby defining a the depression is adapted to fit into the opening.

3. (Cancelled) ~~The apparatus of claim 1 wherein~~

~~there is a gap in the peripheral flange which allows the pull tab to fit over the depression.~~

4. (Cancelled) ~~The apparatus of claim 1 further comprising~~

~~an inner wall which connects the depression to the peripheral flange.~~

5. (Presently Amended) A method of sealing an opened pull-tab can, comprising the steps of:

A. obtaining an opened pull-tab can ~~pulling a pull tab attached to a top portion of a can to create an opening in the top portion of the can;~~

~~wherein the pull tab is pulled in such a manner that the pull tab remains attached to the top portion of the can after the pull tab creates the opening in the top portion of the can and while the opening is exposed;~~

B. obtaining a cap having a top and a bottom, said bottom having peripheral dimensions corresponding to the pull-tab can opening, said top being generally flat with peripheral dimensions greater than the pull-tab can opening, and said top having a notch defining an area at least slightly greater than the width of the can pull-tab;

C. positioning said cap with said notch of said top proximate the can pull-tab;

D. inserting said bottom of said cap into the pull-tab can opening, and

E. sealably covering the pull-tab can opening with a said cap; and



~~removing the cap from the opening without detaching the pull tab from the top portion of the can.~~

6. (Presently Amended) The method of claim 5 wherein

~~the said cap is further comprised of a depression and a peripheral flange, wherein the said depression defined in said top is connected to the peripheral flange, and the peripheral flange at least partially surrounds the depression; and~~

~~further comprising step C': wherein the step of covering the opening with the cap includes inserting the can pull-tab into said the depression into the opening.~~

7. (Cancelled) The method of claim 6 wherein

~~there is a gap in the peripheral flange which allows the pull tab to fit over the depression.~~

8. (Cancelled) The method of claim 6 wherein

~~the cap is comprised of an inner wall which connects the depression to the peripheral flange.~~

### REMARKS

Examiner has rejected Claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by *Jamieson* (6,098,830). In response thereto, Applicant has amended Claims 1, 2, 5 and 6, and respectfully traverses Examiner's rejection.

*Jamieson* ('830) does teach an apparatus for covering an opening in a can. However, Applicant respectfully asserts that *Jamieson* ('830) does not utilize, anticipate, teach or render obvious a can sealing apparatus that fits down into the opening in the top of a can, **creating a seal irrespective of whether a can tab is upwardly extended**. The "cap" referenced by Examiner slides under the can tab and locks to the rim of the can prior to opening. Thereafter, the "cap" is rotated, along with the can tab, in order to cover the exposed opening. Such positioning of the can tab would prevent the use of Applicant's device.

Thus, the configuration and operation of *Jamieson* ('830) is unlike Applicant's device, wherein Applicant's cap may be secured to the can only after opening, and only if the can tab is not rotated to extend over the can opening. Therefore, Applicant respectfully asserts that because the identical invention is not shown, "The identical invention must be shown in as complete detail as is contained in the...claim," *Richardson v. Suzuki Motor Co.*,

868 F.2d 1226, 1236 (Fed. Cir. 1989), *Jamieson* ('830) does not anticipate Applicant's device.

Applicant's invention is distinguished because Applicant's cap is not integral to the can lid, nor does Applicant's cap extend over or lock onto the peripheral edge of the can. Applicant's cap simply secures into the can opening while the can tab is in the traditional post-opening position, thereby easily facilitating subsequent access to the can contents without necessitating further movement of the can tab. This efficient, subsequent access is not possible with *Jamieson* ('830).

Applicant has amended Independent Claims 1 and 5 to clarify and more succinctly define that Applicant's peripheral flange incorporates a receiving port for a flip-top can tab. Because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. V. Union Oil co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), and because *Jamieson* ('830) does not describe each and every element of Applicant's device, Applicant believes that Applicant's Independent Claims 1 and 5, as amended, are distinguished over *Jamieson* ('830).

Further, Applicant has amended Claims 2 and 6 to clarify and more succinctly define the depression in the cap, wherein the

depression cooperates with the pull-tab notch in the cap to facilitate placement in the presence of a pulled pull-tab. Because "[t]he elements must be arranged as required by the claim," *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990), and because *Jamieson* ('830) does not include nor arrange the elements as required in Applicant's claims, Applicant believes that Applicant's Claims 2 and 6, as amended, are distinguished over *Jamieson* ('830).

Applicant believes that the foregoing amendments and arguments distinguish the claims over the prior art and establish that Applicant's claimed invention is novel and non-obvious, thereby placing the rejected independent claims 1 and 5 and all remaining depending claims in condition for allowance.

CONCLUSION

The above-made amendments are to form only and thus, no new matter was added. Applicant respectfully believes that the above-made amendments now place the Claims and application in condition for allowance. Should the Examiner have any further questions and/or comments, Examiner is invited to telephone Applicant's undersigned Attorney at the number below.

Respectfully submitted, this 20th day of December, 2004.



---

Sandra M. Sovinski, Esq.  
Reg. No. 45,781

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Attorney Docket Number: 25980-RA



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket # 25980-RA

December 20, 2004

In re Application of: Coleman, Marian  
Filed: September 10, 2003  
Serial Number: 10/659,548  
For: Cap for Beverage Can

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Mail Stop – Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Please find enclosed a revocation of power of attorney with new power of attorney for the above referenced application. Also, please find a response to final office action and amendment.

Thank you for your time and attention.

Sincerely,

Sandra M. Sovinski, Esq.  
Reg. No. 45,781

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

13

Application Number 10/659,548

Filing Date 09/10/2003

First Named Inventor COLEMAN, Marian

Art Unit 3727

Examiner Name Lien M. Ngo

Attorney Docket Number 25980-RA

**ENCLOSURES (Check all that apply)**

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input checked="" type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input checked="" type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
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<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	Myers & Kaplan Intellectual Property Law LLC		
Signature			
Printed name	Sandra M. Sovinski, Esq.		
Date	12-20-2004	Reg. No.	45,781

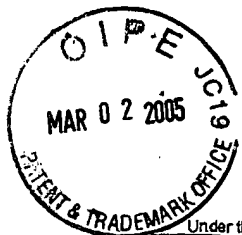
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Signature			
Typed or printed name	LaRenda Meyer	Date	12/20/04

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**REVOCATION OF POWER OF  
ATTORNEY WITH  
NEW POWER OF ATTORNEY  
AND  
CHANGE OF CORRESPONDENCE ADDRESS**

Application Number	10/659,548
Filing Date	09/10/2003
First Named Inventor	Coleman, Marian
Art Unit	
Examiner Name	
Attorney Docket Number	

**I hereby revoke all previous powers of attorney given in the above-identified application.**☐ A Power of Attorney is submitted herewith.**OR**☒ I hereby appoint the practitioners associated with the Customer Number: 30184☒ Please change the correspondence address for the above-identified application to:☒ The address associated with  
Customer Number:30184**OR**

<input type="checkbox"/> Firm or Individual Name	Marian Hannah Coleman				
Address	160 County Rd				
City	Plympton	State	MA	Zip	02367
Country	USA				
Telephone	781-585-6282	Fax			

**I am the:**☒ Applicant/Inventor.☐ Assignee of record of the entire interest. See 37 CFR 3.71.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)**SIGNATURE of Applicant or Assignee of Record**

Signature	Marian H Coleman		
Name	Marian Coleman		
Date	11/22/04	Telephone	781-585-6282

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.38. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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